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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon
corporation,

Plaintiff,

v.

THOMAS L. GAMBARO, an individual;
and **MOTIONLESS KEYBOARD
COMPANY**, an Oregon corporation

Defendants.

Case No. CV 10-0231-BR

**DECLARATION OF THOMAS L.
GAMBARO IN SUPPORT OF
CONCURRENT MOTIONS**

DEMAND FOR JURY TRIAL

**DECLARATION OF THOMAS L. GAMBARO
IN SUPPORT OF CONCURRENT MOTIONS**

1. I, THOMAS L. GAMBARO, under penalty of perjury declare the
following:

2. That on March 16, 2011 I attended an invitational Infrared Seminar at the
Hilton Garden Inn in Lake Oswego Oregon that went from 7:30 AM to 11:30 AM hosted
by FLIR Systems Incorporated. David Shahan, who is the District Manager for the FLIR
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in the Pacific Northwest, extended the invitation via email after telephone requests I made to have a live demonstration of the FLIR Series E Hand-Held Thermal Camera. During our conversation prior to the event David Shahan asked me if I had sued FLIR and I replied that "FLIR has taken me to court." I asked him if the FLIR Series E would be at the seminar and he replied by email that it would be there. I mentioned that I was very interested in the FLIR Series E because it could wirelessly interface with an iPhone or and iPad so it would be very useful for my research into Stirling engine technology being conducted by BioPropulsion LLC. Figure 1 in EXHIBIT ONE shows the seminar front stage from where I was sitting in the room. I made a request after the seminar to assist in making a presentation to potential investors for this research development.

3. During the seminar one of the FLIR Series E Hand-Held Thermal Camera was passed around to the attendees in the room and during the time I personally handled the product I made one simple test to determine if the product has attributes contained in the claims of U.S. Patent No. 5,332,322 related to the ongoing Case No. CV 10-0231-BR.

4. Figure 3 of EXHIBIT ONE is a scan of promotional material passed out during the seminar related to the FLIR Series E product and Figure 4 is an enlarged view part of the cover of the Figure 3 promotional material showing the keyboard and screen of the FLIR Series E product with white letters added to aid understanding of the simple test that was performed to establish physical attributes of the FLIR Series E product. A metal straight-edge was placed on the surface of the housing at points A to B at the top section of the concavity in the housing of the main body of the FLIR Series E Hand-Held product. The metal straight-edge was moved in a perpendicular direction to the main axis

of the device along the top edge of the housing toward the handle of the FLIR product in
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the direction of A toward C and B toward D continuing to point E. This simple test proved conclusively that ALL KEYS operated by the thumb are below the top edge of the concavity and are all BELOW and INSIDE the CONCAVITY in the HOUSING. The metal straight-edge encountered no key-tops of any of the keys of the keyboard as it was moved along the top edge of A to C and B to D toward point E.

5. Establishment of the fact that ALL KEYS of the Thumb Operated Keyboard of the FLIR E Series product are BELOW and INSIDE of the CONCAVITY renders the Aiken Ruling moot for determining infringement of U.S. Patent No. 5,332,322 by one skilled in the art of hand-held ergonomic data entry devices and eliminates the possibility of FLIR Systems Incorporated obtaining a Summary Judgment of Non-Infringement as this has been the only element FLIR has maintained is not present in FLIR products. This simple test has clearly and convincingly established the fact the FLIR Systems Incorporated is literally and through the doctrines of equivalents infringing U.S. Patent No. 5,332,322 and U.S. Design 405,071. This simple test has resolved the only disputed fact in this case that has been ongoing for over a year.

6. During the seminar the representative of FLIR presenting information related to FLIR Thermal Cameras stated that FLIR controlled a 60% market share in this product category and indicated sales of \$1.6 billion USD that is substantially greater than the \$5 million my research of FLIR infringing products. The standing out of court settlement for infringements of the '322 and '071 patents has been established at \$500,000 USD and this would represent a small percentage of the \$90 million USD FLIR spend for Research & Development last year. FLIR has no hope of prevailing in this proceeding and settlement is appropriate to be awarded by the Court in this case.

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7. Figure 5 is a part of the FLIR promotional materials of EXHIBIT ONE that is related to Figure 6, that is a drawing from U.S. Patent No. 5,332,322, showing clearly that the FLIR Series E Hand-Held Thumb Activated Device is virtually identical to the '322 drawing. This provides a clear and convincing comparison to establish the fact that all elements of the '322 patent are present in the FLIR Series E product. Claim One of the '322 patent states "A hand-held device for entering information into an electronic system via a keyboard...". This is further supported by the Figure 7 enlarged scan of the FLIR promotional materials that illustrates the wireless features of the FLIR product with the statement "Connect to iPhone or iPad via Wi-Fi to Use the FLIRViewer App for Processing and Sharing Results." and the Figure 7 statement contained in the FLIR promotional materials that is "Large Backlit Buttons Fit Bare hands or Gloves" and this promotes the '322 Claim One feature that is that "...the device to be held in one hand with the thumb free to move to a predetermined key-actuation location while the device is held,". Figure 5 also illustrates these elements of the '322 patent Claim One.

8. After the FLIR seminar David Shahan helped prepare a presentation to potential investors of BioPropulsion LLC using the FLIR Series E product by taking the images of Figure 2A, that is a wax candle lit to produce thermal patterns and Figure 2B, that is a thermal image recorded by the FLIR Series E device of the candle burning. These images were wirelessly send via Bluetooth technology to my iPad demonstrating the '322 Claim One result of the invention that is "information is entered into an electronic system" as I personally witnessed the images being recorded and transferred to the iPad from the Bluetooth technology of the FLIR Series E product. It was an

impressive demonstration of the FLIR technology that uses the '322 and '071 patents.

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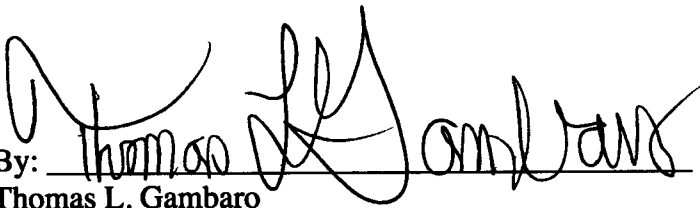
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CONCLUSION

The declaration herein is intended to support the specified motions to either have the presiding Judge Anna Brown order settlement according to the requested terms or convene a jury to conclude this proceeding with a patent infringement ruling and larger judgment awarded by the jury as specified in the concurrent motions.

Dated: March 18, 2011

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 18, 2011, a true copy of the foregoing **DECLARATION OF THOMAS L. GAMBARO IN SUPPORT OF CONCURRENT MOTIONS** was served to the following counsel by hand delivery, or electronic filing via e-mail with electronic signature and first class mail:

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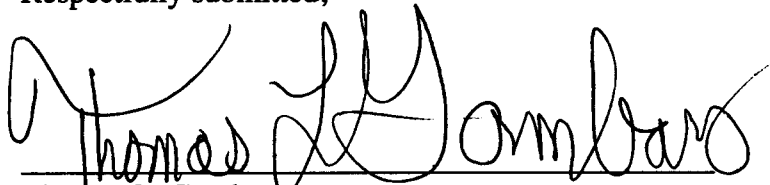
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Respectfully submitted,

March 18, 2011

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